Supreme Court of the United States.

ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

JAMES L. HYATT, as Chief of Police of the City of Albany, N. Y., plaintiff in error,

AGAINST

THE PEOPLE OF THE STATE OF NEW YORK, on the Relation of CHARLES E. CORKRAN, defendant in error.

No. 49[illegible].
October Term, 1902.

BRIEF FOR PLAINTIFF-IN-ERROR.

In the latter part of February, 1902, the governor of the state of Tennessee made requisition upon the governor of the state of New York for the return to the state of Tennessee of one Charles E. Corkran, charged with the crime of larceny and false pretenses. Two hearings were had before the governor of the state of New York, at each of which Charles E. Corkran appeared and was represented by counsel. After the hearings were had the governor issued a warrant to the chief of police of the city of Albany, N. Y., remanding the said Charles E. Corkran to the custody of the said chief of police of the city of Albany, N. Y., directing that, after complying with the provisions of section 827 of the code of criminal procedure of the state of New York, he deliver the said Charles E. Corkran to one Vernon Sharp, the agent for the state of Tennessee. While the said Charles E. Corkran was in the custody of the chief of police of the city of Albany, N. Y., he, on or about the 13th day of March, 1902, sued out a writ of *habeas corpus* returnable before the supreme court of the state of New York. (Page 2.) To that writ the plaintiff-in-error made return, to which was attached the warrant of the governor. (Pages 4 and 5.) The return was traversed (page 6) and after summary hearing, (pages 7, 8 and 9) an order was made at a special term of the supreme court on the 19th day of March, 1902, dismissing the writ and

remanding the defendant-in-error to the custody of the plaintiff-in-error. The opinion of the court dismissing the writ is found at pages 10 and 11 of the record. Corkran appealed to the appellate division of the supreme court and after a hearing in the appellate division the order of the special term was unanimously affirmed. (Page 14.) From that order an appeal was taken to the court of appeals; a hearing was had there which resulted in an order reversing the order of the supreme court and directing that the said Charles E. Corkran be discharged from the custody of the plaintiff-in-error. (Page 17.) The opinion of the court of appeals is found at pages 18 to 38 of the record. The plaintiff-in-error thereupon sued out this writ of error to review the decision of the court of appeals. (Pages 39 to 41.)

Statement.

Charles E. Corkran was indicted in the state of Tennessee for the crime of grand larceny and false pretenses and three indictments were attached to the requisition papers sent to the governor of the state of New York. He demanded a hearing before the governor, which was accorded him, and two days were spent in a hearing, at each of which times he was represented by counsel. Affidavits and other papers were submitted by both sides, and as a result of the hearing the governor of the state of New York decided to surrender the said Charles E. Corkran to the state of Tennessee for trial and punisl.ment, and the governor, in the manner required by section 827 of the code of criminal procedure, issued a warrant directed to the chief of police of the city of Albany, N. Y., the plaintiff-in-error herein, committing the said Charles E. Cockran to the custody of the plaintiff-in-error. No other papers were returned by the governor, it being the invariable practice of the executive of the state to refuse to return any papers other than the warrant.

While Corkran was in the custody of the chief of police he obtained this writ of *habeas corpus* to test the validity of the warrant and to inquire as to the cause of his imprisonment. He at no time was out of the custody of the chief of police for the reason that at the same time the order was made dismissing the writ a stay was granted to enable him to give bail pending the appeal (page 11), and when the appellate division made its decision affirm-

ing the order of the special term a stay was also granted. (Pages 14 and 15.) The defendant-in-error, then, never was out of the custody of the chief of police and never was delivered to the custody either of the state of Tennessee or the agent for the state of Tennessee.

The claim made by the defendant-in-error in the supreme court and the court of appeals was the same as made by him before the governor, and that is, that he was not personally present in the state of Tennessee at the times the offenses are charged to have been committed, and that, as he was not actually present in the state at the exact times the crimes were committed, he is not a fugitive from justice and should not be surrendered to the state of Tennessee. The court at special term, as will appear by the opinion of Mr. Justice Herrick (pages 10 and 11) held that the case was within the intent of the constitutional provision, and that the defendant-in-error should be extradited. The appellate division wrote no opinion. The court of appeals, as appears by its opinion (pages 18, *et seq.*) sustained the contention of the defendant-in-error and held that, as he was not personally present within the state of Tennessee at the exact times the crimes were committed, he could not be surrendered to the state of Tennessee, for the reason that he was not fugitive from justice within the meaning of the constitution of the United States and the acts of congress.

The plaintiff-in-error contends that Charles E. Corkran is a fugitive from justice. That it is immaterial whether or not he was personally present within the state of Tennessee at the time the crime was committed and that he should be surrendered for trial and punishment.

The indictments were found February 26, 1902. The crimes were charged to have been committed May 1, 1901, May 8, 1901 and June 24, 1901. Cockran was in the State of Tennessee July 2nd, 1901 (See pages 7, 8, and 9).

Assignment of Errors.

I. The court erred in holding and deciding that the relator was entitled to a writ of *habeas corpus*, and the relief prayed for in his petition and in discharging the relator, and in reversing the order of the supreme court dismissing the said writ of *habeas corpus* and remanding the relator to the custody of the defendant.

II. The court erred in not ordering and adjudging that the order of the supreme court denying the prayer of the relator and dismissing the writ of *habeas corpus* be affirmed in all things, and that the said relator be remanded to the custody of the defendant.

III. The court erred in deciding that the relator should not be remanded to the custody of the defendant for the purpose of being sent back to the state of Tennessee, as required by the provisions of the constitution of the United States (article 4, section 2, subdivision 2), and in deciding that the relator was not a fugitive from justice within the intent and meaning of that provision of the constitution of the United States.

IV. The court erred in deciding that the relator was entitled to a writ of *habeas corpus* and to his discharge on the ground that he was not a fugitive from justice, in that it was a denial of the right of interstate rendition and a decision against the validity of the authority and power under the constitution of the United States and under section 5278 of the revised statutes of the United States, being chapter 7 of the laws of congress, passed February 12, 1793.

V. The court erred in assuming to review the decision of the governor of the state of New York on *habeas corpus* after the relator had been heard before the governor of the state of New York, and the governor of the state of New York had issued his warrant for the return of the said Charles E. Corkran to the state of Tennessee, and in denying the right of the governor under the constitution of the United States and the laws of congress to return the said Charles E. Corkran to the state of Tennessee.

VI. The court erred in deciding that the relator was not a fugitive from justice within the meaning of the constitution of the United States (art. 4, sec. 2, subd. 2) and within the meaning of the laws of congress (chap. 7), passed February 12, 1793, and section 5278 of the revised statutes of the United States.

VII. The court erred in deciding against the validity of the authority exercised by the governor of the state of New York under the laws of congress and the authority of the United States and the

constitution in directing the return of the said Charles E. Corkran to the state of Tennessee.

VIII. The court erred in deciding in favor of the validity of the statutes of the state of New York and of the authority exercised under the said statutes and decisions of said court allowing a writ of *habeas corpus* in a case of this kind, and in granting the said writ of *habeas corpus*, and in discharging the relator, the said statutes being the laws of 1876 (chap. 448), and the laws of 1880 (chap. 178, secs. 2015 and 2066, inclusive, as amended).

IX. The court erred in granting the writ of *habeas corpus* herein and ordering the discharge of the relator, on the ground that he was not a fugitive from justice within the meaning of the constitution of the United States and the laws of congress, and in not dismissing the said writ and remanding the said Charles E. Corkran to the custody of the defendant, to be returned to the state of Tennessee in accordance with the directions of the warrant of the governor of the state of New York, and deciding against the validity of the constitution and authority of the United States under which the governor of the state of New York acted.

Requisition papers sufficient.

There is no claim here that the papers are defective in any respect; the warrant of the governor is conclusive as to every fact stated in this case, because there is no denial of any of the facts stated in it. The courts of the United States (Ex parte Dawson, 83 Fed., 307-308), the courts of the state of New York (People v. Donohue, 84 N. Y., 438), have held that the warrant of the governor, in the absence of any other evidence, is conclusive and final upon the courts. There is no denial in this record anywhere, either in the petition filed by Corkran or in his testimony, that he is not guilty of the crime as charged. There is no claim that he was not regularly and properly indicted by a grand jury of the state of Tennessee for the crime of grand larceny. There is no claim that the requisition papers forwarded by the governor of the state of Tennessee to the governor of the state of New York were not proper and sufficient in every particular. The sole defense is based upon this alleged claim, that, as there was no proof that Corkran

was in the state of Tennessee at the times the crimes were committed, and that, as the proof was that he was without the state of Tennessee at the times charged in the indictments, he cannot be sent back for trial and punishment. Every material fact stated in the warrant for extradition is admitted, except this one, or at least, is not denied, and the court must assume that this man was lawfully indicted upon competent evidence, since the court cannot presume that the indictment is fictitious or procured by fraud. The indictments were properly authenticated; they were supported by the certificate of the attorney-general of the state of Tennessee, that the indictments were properly found and the charge made in good faith, and it was not found for the purpose of collecting a debt, and the papers were properly authenticated under the seal of the state of Tennessee, and no objection has been made to them. Hence there can be no discussion here as to the guilt or innocence of Corkran, nor of the sufficiency of the indictments and requisition papers. The whole issue is narrowed down to this one question, and for the reasons submitted herein it is immaterial where he was when the crime was committed.

The constitution and laws of congress provide for inter-state rendition of fugitives, even in cases where the party charged was not actually present in the demanding state at the time the crime was committed.

The constitution of the United States (article 4, section 2, subdivision 2) provides as follows: "A person charged in any state with treason, felony or other crime, who shall flee from justice and be found in another state, shall, on demand of the executive authority of the state from which he fled be delivered up to be removed to the state having jurisdiction of the crime." The revised statutes of the United States (sec. 5278, being laws of congress, 1793, chap. 7), provide as follows: "Section 1. That whenever the executive authority of any state or territory demands any person as a fugitive from justice, of the executive authority of any state or territory to which such person has fled, and produce a copy of an indictment found, or an affidavit made before a magistrate of any state or

territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the state or territory from whence the person so charged has fled, it shall be the duty of the executive authority of the state or territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the apprehending, securing and transmitting such fugitives to the state or territory making such demand, shall be paid by such state or territory."

It appears in Madison's notes of the convention debates (Elliott's Debates [Lippincott Edition, 1881], vol. 5, pages 381, 487), that when this provision of the constitution came before the convention the following proceedings were had, on the 6th day of August, 1787: "Committee on detail rendered a report which contained the following clause:

"'Article XV. Any person charged with treason, felony, or high misdemeanor in any state, who shall flee from justice and shall be found in any other state, shall, on demand of the executive power of the state from which he fled, be delivered up and removed to the state having jurisdiction of the offense."'

On the 28th day of August, 1787, the convention took up for consideration article XV, and the following proceedings were had:

"Article XV being thus taken up, the words 'high misdemeanor' were struck out and the words 'other crime' inserted in order to comprehend all proper cases, it being doubtful whether 'high misdemeanor' had not a technical meaning too limited."

Thus, at the outset and in the convention it was the evident design of the framers of the constitution to make this provision broad enough to include every possible crime committed within the borders of the United States, and that no state should be an asylum for fugitives committing crimes in other states.

By virtue of the power thus conferred by the constitution congress, in the year 1793, passed an act known as chapter 7, above

quoted as section 5278 of the revised statutes, and that act was entitled "An act respecting fugitives from justice, and persons escaping from the service of their masters."

The decision of the Court of Appeals.

The decision of the court of appeals was based upon the doctrine that a person was not a fugitive from justice and should not be surrendered upon demand, unless he was physically present in the demanding state at the exact time the crime was committed. The court followed the decisions of certain other courts and text writers, referred to in the opinion of Judge Cullen. Those decisions limit the constitutional provision to the smallest possible effect. The effect of the decision is this: If a man leaves New York city and crosses by ferry to Jersey City and while there steals the smallest trifle and then returns to New York city, he is a fugitive from justice and shall be surrendered on demand. If the same man, instead of using the ferry, uses the telephone and by fraud steals any amount of property from a resident of Jersey City, he is not a fugitive from justice and cannot be surrendered to New Jersey for trial and punishment; or,

If a man crosses from New York city to Jersey City and commits a simple assault, he must be returned to New Jersey as a fugitive criminal.

If the same man uses the mail or express and sends a poisoned preparation to a citizen of New Jersey and thereby commits a murder in New Jersey, he is not a fugitive criminal and shall not be surrendered to New Jersey for trial and punishment.

And these examples might be multiplied, since murder, assault, arson, larceny, forgery, perjury and any crime not requiring direct personal contact may be committed by use of the mails, express, telegraph, telephone or innocent messenger, or by one standing near the boundary line, in another state, although the perpetrator never crosses the line into the state wherein the crime is consummated or committed.

If the decision is correct, then the insufficiency of the constitution must be confessed, in this instance, and amendment resorted to.

The decision of the court below and the argument of the defendant-in-error is based upon a narrow construction of the preposition

"from" in the constitution. The court construes the meaning of that word inclusively, thereby working out a strict construction of the provision, contrary not only to the general policy of the law, but to the ordinary rules of construction. In the case of Griffith v. Bogert (18 How., 163), was laid down the rule of construction as follows: "The intention and policy of the enactment should be sought for and carried out. Courts should never indulge in nice grammatical criticism of prepositions or conjunctions, in order to destroy rights honestly acquired." The court should not indulge in a fine grammatical criticism of the preposition "from" in the constitution in order to defeat the manifest intention of the provision and bring about a condition which would make the states asylums for fugitive criminals of other states. There is no reason why the word "from" should be construed inclusively and held to mean that the fugitive must depart from a point within the territorial limits of the state. The better way would be to give it a meaning, both inclusive and exclusive, so that one should be deemed as fleeing from the state, whether he fled from a point within its borders or whether he fled from its demand for surrender from a point without its boundaries, or whether he fled from a point on its borders from its demand for his surrender. The word "flee" does not necessarily imply action. A person flees justice, or a temptation, or a pestilence when he avoids it. He flees from justice when he avoids the demands of justice and does everything within his power to prevent the state obtaining jurisdiction of his person, and that is the ordinary meaning of the phrase "fugitive from justice." It does not mean a man who commits a crime and runs away, only, but includes those who commit crimes and who avoid detection or punishment after detection. A man might commit a crime undetected and then conceal himself effectually but a short distance from the scene of the crime and he is none the less a fugitive from justice.

"Such is the character of human language that no word conveys to the mind, in all situations, one single definite idea; and nothing is more common than to use words in a figurative sense. Almost all compositions contain words, which, taken in their rigorous sense, would convey a meaning different from that which is obviously intended." (McCullough v. Maryland, 4 Wheat., 414.)

"The word 'from,' with respect to both time and space, has been the subject of judicial construction in a very large number of cases. The principal question which has arisen is whether the term is to be held inclusive or exclusive of the *terminus a quo*, as applied either to time or distance, and attempts have been made to formulate general rules by which this can be determined. Thus it has been said that in its grammatical sense, when referring to a certain point as a *terminus a quo* the word 'from' always excludes that point. Again, it has been argued that while the term 'from' a day, when used to pass an interest, includes the day of date, the rule is otherwise when the term is used merely to fix a terminus from which to compute time. And by other authorities the rule has been laid down thus: Where time is computed from an act done, the general rule is to include the day; but where it is computed from a day, the day is excluded." (Am. and Eng. Ency. of Law, vol. 14, page 553.)

In construing the provision of the United States revised statutes (sec. 1045) that "nothing in the two preceding sections shall extend to any person fleeing from justice" (which provision excluded from the terms of the statute of limitation the time spent by a fugitive without the jurisdiction), this court said: "In order to constitute a fleeing from justice it is not necessary that the course of justice should have been put in operation by the presentment of an indictment by a grand jury, or by the filing of an information by the attorney for the government or by the making of a complaint before a magistrate. It is sufficient that there is a flight, with the intention of avoiding being prosecuted, whether a prosecution has or has not been actually begun." * * *

From these considerations our conclusion is that, in order to constitute "fleeing from justice" within the meaning of section 1045 of the revised statutes, it is not necessary that there should be an intent to avoid the justice of the United States; but it is sufficient that there is an intent to avoid the justice of the state having criminal jurisdiction over the same territory and the same act." (Streep v. United States, 160 U. S., 128.) It is, then, the intent to avoid justice that makes one a fugitive from justice, and it is immaterial whether the crime has been detected, or not or a complaint made before a magistrate, or an indictment found, nor

what the secret intent of the culprit may be; he becomes a fugitive from justice when he avoids the demands of justice. And he flees "from" the justice of the state when he avoids the justice of the state.

A case similar to the case at bar is that of Roberts v. Reilly (116 U. S., 80). Roberts was indicted in the state of New York for the crime of grand larceny. He was arrested in Georgia. An application was made by the governor of the state of New York to the governor of the state of Georgia for the extradition of Roberts. Roberts filed an affidavit (see 116 U. S., page 87) denying that he was in the state of New York on the day laid in the indictment as the date of the offense, and denied that he was in the state of New York after the indictment was found, or that he fled therefrom, and his affidavit was corroborated by the affidavit of a third party filed in the proceeding. An application was made in the United States district court for the southern district of Georgia for the discharge of Roberts, on the ground that he was not a fugitive from justice from the state of New York, and the writ was dismissed and Roberts remanded for extradition. An appeal was taken to the United States supreme court, and it was held that Roberts was a fugitive from justice within the meaning of the constitution and the act of congress.

"The appellant in his affidavit does not deny that he was in the state of New York about the date of the day laid in the indictment when the offense is alleged to have been committed, and states, by way of inference only, that he was not in that state on that very day; and the fact that he has not been within the state since the finding of the indictment is irrelevant and immaterial. To be a fugitive from justice, in the sense of the act of congress regulating the subject under consideration, it is not necessary that the party charged should have left the state in which the crime is alleged to have been committed after an indictment found, or for the purpose of avoiding a prosecution anticipated or begun, but simply that, having within a state committed that, which by its laws constitutes a crime, when he is sought to be subjected to its criminal process to answer for his offense, he has left its jurisdiction and is found within the territory of another." (Roberts v. Reilly, 116 U. S., 80, at page 97.)

Charles E. Cook opened a bank in Juneau, in the state of Wisconsin, and entered upon a general banking business; although the bank was insolvent, it was kept open and deposits received. Cook was indicted for receiving the deposits, with the intent to cheat and defraud. The governor of the state of Wisconsin made requisition of the governor of the state of Illinois and Cook was arrested in the state of Illinois and taken to the state of Wisconsin. He sued out a writ of *habeas corpus* praying for his discharge, on the ground that he was not a fugitive from justice and should not be held. Cook was not in Juneau, in the state of Wisconsin, at the time the deposits were received, the acceptance of which he was indicted for, and he sought his discharge on that ground that not having been within the state at the time the deposits were received and the crime committed, he was not extraditable. The court held that even though not within the state at the time of the commission of the offense, he had committed a crime against the laws of the state of Wisconsin, having been found within the state of Illinois, he was properly held as a fugitive from justice, and the court followed the decision of Roberts v. Reilly. (In re Cook, Fed Rep., 833; 146 U. S., 183.)

In Regina v. Jacobia (46 Law Times [New Series], 595), it appeared that Jacobia and Hiller, residing in Holland, by means of false pretenses, induced a merchant residing in Germany to send them certain household furniture which they procured in Holland and had reshipped to England, whence both fled. Germany made a demand on Great Britain for the return of Jacobia and Hiller as fugitives from justice. It was held that even though Jacobia and Hiller had never been within the borders of the Empire of Germany, they had committed crime therein and were fugitives from justice, and the court dismissed their application for a writ of *habeas corpus* and remanded them for extradition.

Reason for a broad construction.

In Kentucky v. Dennison (24 How., 66) the governor of the state of Kentucky made requisition upon the governor of the state of Ohio for the return of a fugitive who was indicted for the crime of assisting a slave to escape. The governor of Ohio referred the matter to his attorney-general, and, upon his opinion, refused

to surrender the fugitive, and one of the grounds upon which he placed his decision was that the phrase "other crime" in the constitution meant only such crimes as were known to the common law, and not all such acts as might be defined as criminal by the different states. The governor of the state of Ohio, having refused to extradite the fugitive, the state of Kentucky made a motion in the United States supreme court for an order requiring the governor of the state of Ohio to show cause why a writ of *mandamus* should not issue commanding him to surrender the fugitive.

"For this was not a compact of peace and comity between separate nations who had no claim on each other for mutual support, but a compact binding them to give aid and assistance to each other in executing their laws, and to support each other in preserving order and law within its confines, whenever such aid was needed and required; for it is manifest that the statesmen who framed the constitution were fully sensible, that from the complex character of the government, it must fail, unless the states mutually supported each other and the general government; and that nothing would be more likely to disturb its peace and end in discord than permitting an offender against the laws of a state, by passing over a mathematical line which divides it from another, to defy its process, and stand ready, under the protection of the state, to repeat the offense as soon as another opportunity offered" (at page 100).

In that case a broad and comprehensive construction following the intent and purpose of the constitution was declared, and the policy of surrendering all fugitives from justice, no matter what might be the character of the crime, nor where nor how it was committed, was indicated.

It was one of the necessities of the occasion that the constitution should be drafted in general language. "The constitution unavoidably deals in general language. It did not suit the purposes of the people, in framing this great charter of our liberties, to provide for minute specifications of its powers or to declare the means by which those powers should be carried into execution. It was foreseen that this would be perilous and difficult, if not an impracticable task. The instrument was not intended to provide merely for the exigencies of a few years, but was to endure through a long lapse of ages, the events of which were locked up in

the inscrutable purposes of Providence." (Martin v. Hunter, 1 Wheaton, 326.)

No right of asylum.

The decisions of those courts that have held against the right of interstate rendition where the prisoner was only constructively present within the state, proceed upon the theory of the right of an asylum, and the question is discussed, as it would be between independent sovereignties anxious to uphold their separate rights and dignities, and not as a question between states bound by common interests and by the desire to promote the general welfare and domestic tranquility. With the great increase in population, with the wonderful development of the national resources and growth of commerce and manufactures and the perfection of new and quicker methods of communication, has come closer commercial union of the people in different parts of the country. This is a period of great expansion in population, territory and in commerce, and with that increase, unfortunately, has come an increase in crimes against person and property. The ingenuity of the criminal, especially in crimes against property, has kept pace with the genius of the time. The perfection of the mail and express system, the growth of the railroad system and speed of trains, the perfection of the telegraph and the marvelous uses of the telephone bring all the people of the country into closer communication; and the effective use of those agencies by criminals calls for a more determined and united enforcement of the criminal laws. We have progressed since 1787, and much of that progress is due to the liberal construction of the constitution. It has always been the policy of the United States supreme court to adopt such a construction as would really establish justice and insure domestic tranquility, provide for common defense and promote the general welfare. In the cases of Kerr v. Illinois, Lascelles v. Georgia, Mahon v. Justice, Howard v. Jenison herein cited, these varying claims of right of asylum, state sovereignty, liberty of the individual have been urged without success. The uniform tendency of the decisions has been to place the doctrine of interstate rendition on the broadest possible basis. In the case of foreign extradition the courts have followed the treaties in the interest of peace and

national honor. They have construed those treaties strictly because the treaty conditions required it, because the nation was bound in honor to observe the terms of the treaties; but wherever an attempt has been made to limit the terms of the constitutional provision, with reference to interstate rendition, the court has steadily set its face against a strict construction.

What does article 4 of the constitution mean, if it does not intend to place all the people of the country on an equality, irrespective of territorial bounds? That article provides that the public acts, records and judicial proceedings of each state shall receive full faith and credit everywhere within the United States, and this provision includes the records and judicial proceedings of the courts of every kind and description, and to them full faith and credit must be given. Thus, is the judicial dignity of the state maintained. The next section provides that citizens of each state shall have the privileges and immunities of citizens of the several states, and so wherever one may go within the territory of the United States he is entitled to all the rights, privileges and immunities of the citizens of the state wherein he happens to be, and does it not necessarily follow that he shall be subject to the correlative burdens and obligations? As to the rights, privileges and immunities there are no boundaries, then why should the state boundary be an impassible barrier to criminal prosecution? The state of Tennessee cannot deny to the defendant-in-error any right or privilege held or exercised by any citizen of the state of Tennessee; whether he goes within that state or not he is entitled to the same protection, the same rights, privileges and immunities as are enjoyed by the citizens of that state; his business interests, his property must receive the same care and protection. He has the same right to appear in the courts and enforce his rights or redress his wrongs as any citizen of the state of Tennessee. Does it not necessarily follow that Corkran is subject to the same obligation of obedience to the laws of the state of Tennessee, and is he not liable to the same punishments as are or may be inflicted upon a citizen of the state of Tennessee? There is no north, no south, nor east nor west, but everywhere we are citizens of one land, enjoying the same right and privileges, and can it be said that when a crime is committed this fabric dissolves into forty-five

separate parts, each one of which is an asylum of refuge to the criminal who enters its territory? "The plain answer to this contention is that the laws of the United States do not recognize any such right of asylum as is here claimed, on the part of a fugitive from justice in any state to which he has fled." (Mahon v. Justice, 127 U. S., at 715.) "But the fallacy of the argument lies in the assumption that the states of the union occupy towards each other, in respect to fugitives from justice, the relation of foreign nations, in the same sense in which the general government stands towards independent sovereignties on that subject, and in the further assumption that a fugitive from justice acquires in the state to which he may flee the same state or personal right of protection, improperly called a right of asylum, which secures to him exemption from trial and punishment for a crime committed in another state, unless such crime is made the special object or ground of his rendition * * * the sole object of the provision of the constitution and the act of congress to carry it into effect is to secure the return of persons accused of crime, who have fled from the justice of a state, whose laws they are charged with violating." (Lascelles v. Georgia, 148 U. S., at 542.)

When an attempt was made to limit the meaning of the phrase "other crime," it was promptly met by the decision of this court in Kentucky v. Dennison, and Lascelles v. Georgia, with the broad ruling that "other crime" meant every offense that was made punishable by the laws of any state, and that no one state had the right to sit in judgment upon the policy or necessity of the criminal laws of any other state. When an attempt was made to exclude the territories from the effect of the constitutional provision, it was held that the word "state" included states and territories. (Ex parte Reggel, 114 U. S., 642.) When an attempt was made to sustain the doctrine that a person charged with crime and sent from one state to another on demand could not be tried for any other crime than that stated in the requisition papers, it was held that there was no place in the law of interstate rendition for such a doctrine. And when an attempt was made to make an abduction, or kidnapping, or enticing a person within the limits of a state by improper means a defense, the courts again, following their liberal rules, rejected the theory and held that it mattered not

how a man was brought within the jurisdiction of a court; once there he was liable to trial and punishment. It is to be noted that all of those contentions proceeded upon the theory that the states were independent sovereignties, and that in considering the question of interstate rendition the states must be placed upon the plane of foreign nations treating with each other, and it is also to be noted that in overruling each and every one of these contentions the court has denied the theory of independent sovereignty and has given to the constitutional provision the effect of a general police regulation, enforcible and binding upon every state and territory within the union. If a man, charged with one crime and surrendered upon demand, may be tried for any other crime when brought within the jurisdiction of the demanding state, then what reason is there for subjecting to trial and imprisonment the man who commits a crime while personally present within a state and exempting from trial and imprisonment the man who commits the crime without stepping across the boundary line? Does not such a construction of the law tend to disturb the domestic tranquility and induce kidnapping and other unlawful methods of forcibly bringing a criminal within the jurisdiction of a state?

"If, from the imperfection of human language, there should be serious doubts respecting the extent of any given power, it is a well-settled rule that the objects for which it was given, especially when those objects are expressed in the instrument itself, should have great influence in the construction." (Gibbons v. Ogden, 9 Wheaton, 188.)

"This provision of the constitution has two objects; the procuring possession of the offender, and the prevention of irritation between the states, which might arise from giving asylum to each other's criminals, and from violently invading each other's territory to capture them. It clearly implies that there shall be no resort to force for this purpose. The constitution has abrogated, and the states have surrendered, all right to obtain redress from each other by force. The constitution was made to "establish justice" and "insure domestic tranquility;" and to attain this end as between the states themselves, the judicial power was extended "to controversies between two or more states," and they were enjoined to deliver up to each other fugitives from justice

when demanded, and even fugitives from service." (Mahon v. Justice, 127 U. S., at 716.)

Decision makes constitutional provision only half effective.

The constitutional provision should not be weakened and made only half effective by this narrow construction of the phrase "from which." We should look rather for the dominating principle of construction, to the closing phrase of the section which defines clearly the state having the right to demand rendition, namely, "the state having jurisdiction of the crime," and particularly so because in the construction of amendment 6 it was held that the right to a trial in the state or district wherein the crime was committed did not mean the state or territory wherein the defendant resided or was personally at the time the crime was committed, but the state or territory wherein the crime was committed. (In re Palliser, 136 U. S., 265.) And so it should be held that article 4, section 2, subdivision 2 does not mean the state wherein the defendant was personally at the time the crime was committed, but the state wherein the crime was committed, "the state having jurisdiction of the crime."

The decision of the court below is a long step backwards, and is an adoption of the policy of strict construction. It is adopting a rule of construction which, if followed as to all the other provisions of the constitution, would have weakened that charter to the point of uselessness. Judge Story, in his commentaries on the constitution, said: "It is of vital importance to the public administration of criminal justice and the security of the respective states that criminals who have committed crimes therein should not find an asylum in other states, but should be surrendered up for trial and punishment. It is a power most salutory in its general operation by discouraging crimes and cutting off the chances of escape from punishment. It will promote harmony and good feeling among the states and will increase the general sense of the blessings of the national government. It will, moreover, give strength to a great moral duty, which the neighboring states especially owe to each other by elevating the policy of the mutual suppression of crime into a legal obligation. Hitherto it has proved as useful in practice as it is unexceptionable in its character." (2 Story on Const., sec. 1809.)

Amendment necessary.

Neither the constitution nor the acts of congress provide that only those who, when physically present within the territorial jurisdiction of the demanding state, commit a crime and depart therefrom, are fugitives from justice; and in order to sustain the strict construction claimed by the relator it will be necessary to read such a phrase into the constitution. The constitution provides that "A person charged in any state with treason, felony, or other crime;" it does not provide "A person who commits treason, felony, or other crime, when actually within the state, etc." All that is necessary is that the person be charged with having committed a crime within the state, and that the state wherein the crime was alleged to have been committed should have jurisdiction of the offense. Those elements are present in this case. Proper indictments were sent to the governor of this state charging Charles E. Corkran with the commission of the crime of larceny and false pretenses. The state of Tennessee has jurisdiction of such crimes. He has fled from justice, within the meaning of the constitution, because he was within the state of Tennessee July 2 and July 16, 1901 (pages 7-9), eight days and twenty-four days, respectively, after the time when it is charged the last offense was committed. It appears that he has left the state of Tennessee and has never returned to it. It also appears that he is resisting the efforts of the state of Tennessee to secure his return to that jurisdiction for trial; consequently, within the decision of the United States supreme court in Roberts v. Reilly, he is a fugitive from justice. As was said in that case: "The fact that he has not been within the state since the finding of the indictment is irrelevant and immaterial."

It is not the policy of the law to screen criminals from the legal consequences of their crimes. Courts should not, by strained construction, establish asylums for fugitive criminals. If the laws of a state have been violated and crime committed, the wrong-doer should be punished. He should be surrendered by the authorities in whose jurisdiction he has sought refuge to the demanding state for trial. It would be a monstrous doctrine that would make New York state an inviolable sanctuary for criminals who perpetrate

their offenses by false tokens, fraudulent paper or representations communicated by mail or innocent agents. Such a decision would afford to "bunco men," "green-goods dealers" and commercial swindlers a haven of refuge within this state and would be a security to them in plying their games and frauds. Safe within this state they could plan and carry into effect their criminal purposes, plunder the merchants, banks and tradesmen of other states. In these days of great commercial enterprise, carried on for the most part upon credit, when there is every opportunity to create and maintain a false standing, when the merchants of the south and west are dealing with New York merchants through agents and by correspondence, when New York merchants are so largely dependent upon credit ratings, this is the last state that should establish the ruling that crimes committed by persons not actually within the demanding state are not extraditable, we would be exposing ourselves to woeful retaliation by the other states of the union.

There is no place in the law of interstate rendition for the doctrine that actual presence in the demanding state at the time of the commission of the offense charged shall be *conditio sine qua non*. Frauds are attempted and committed by and through "endless chains of letters," advertisements of "get-rich-quick" schemes, sure methods of stock trading, betting on horse races and like schemes. "Community of interest" in trade and manufactures, with its attendant consolidation of interests widely scattered, opens a vast field for fraudulent operations. Such consolidations permit of the incorporation of companies in different states, false credit ratings, the fraudulent use of commercial paper and an ample opportunity to commit larceny by means of unwary and innocent clerks and agents. Is New York state to be made the haven of all those swindlers?

One offending against the laws of the United States may be sent to any part of the country.

One of the reasons suggested by the court below for its decision was that persons might be taken from their home and friends to places at a great distance and tried among strangers, but there is

no reason why the court should be so tender of the feelings of the criminal. So far as offenses against the laws of the United States are concerned, a man may be transported from Maine to California or from Oregon to Florida and tried for crimes committed, even though he was the width of the continent from the scene of the crime at the time of its commission. Section 731 of the revised statutes of the United States provides: "When any offense against the United States is begun in one judicial district and completed in any other, it shall be deemed to have been committed in either and may be dealt with, inquired of, tried, determined and punished in either district, in the manner, and as if it had been actually and wholly committed therein," and in the cases of Horner v. United States (143 U. S., 207), and In re Palliser (136 U. S., 257), the defendants were, in the Horner case, sent from the southern district of the state of New York to the southern district of the state of Illinois for trial, and in the Palliser case, sent from the southern district of New York to the southern district of Connecticut to be tried for crimes committed by sending through the mails illegal matter, and these cases recognize the right, so far as offenses against the United States are concerned, to send a man any distance, and it is immaterial whether or not he was in the district in which the crime was committed at the time of its commission so long as he has committed the crime within the district he may be sent to any distance.

"Reference was made in argument to the question, often disputed, where an indictment for murder shall be tried, when a person mortally wounded in one jurisdiction afterwards dies in another jurisdiction? (See Commonwealth v. Macloon, 101 Mass., 1, and authorities there cited; The Queen v. Keyn, 2 Ex. D., 63; 11 Am. Law Review, 615; State v. Bowen, 16 Kan., 475; United States v. Guiteau, 1 Mackey, 498.) But there the original unlawful act is not only done by the offender, but reaches the person at whom it is aimed, in one jurisdiction, and it is the subsequent effect only which takes place in another jurisdiction. We have no occasion now to consider such a case beyond observing that before the Declaration of Independence provision had been made by statute, both in England and Ireland, for trying such cases in either jurisdiction, and was never supposed to be

inconsistent in principle with the provision of Magna Charta (c. 14), for trial by a jury of the vicinage. (1 East P. C., 366; 1 Gabbett's Crim. Law, 501.) It is universally admitted that when a shot fired in one jurisdiction strikes a person in another jurisdiction the offender may be tried where the shot takes effect, and the only doubt is whether he can be tried where the shot is fired. (Rex v. Coombes, 1 Leach [4th ed.], 388; United States v. Davis, 2 Sumner, 482; People v. Adams, 3 Denio, 190, 207, and 1 N. Y. 173, 176, 179; Cockburn, C. J., in The Queen v. Keyn, 2 Ex. D., 233, 234.)

When a crime is committed partly in one district and partly in another, it must, in order to prevent an absolute failure of justice, be tried in either district, or in that one which the legislature may designate; that congress has accordingly provided that, "when any offense against the United States is begun in one judicial district and completed in any other, it shall be deemed to have been committed in either, and may be dealt with, inquired of, tried, determined and punished in either district, in the same manner and as if it had been actually and wholly committed therein." (Rev. Stat., sec. 731.)

When an offense is committed by means of a communication through the post-office, the sender has sometimes, as appears by the cases cited for the petitioner, been held to be punishable at the place where he mails the letter. (United States v. Worrall, 2 Dall., 384; United States v. Bickford, 4 Blatchford, 337; Rex. v. Williams, 2 Campbell, 506; The King v. Burdett, 3 B. & Ald., 717, and 4 B. & Ald., 95; Perkin's Case, 2 Lewin, 150; Regina v. Cooke, 1 Fost. & Finl., 64; The Queen v. Holmes, 12 Q. B. D., 23; S. C., 15 Cox Crim. Cas., 343.) But it does not follow that he is not punishable at the place where the letter is received by the person to whom it is addressed; and it is settled by an overwhelming weight of authority that he may be tried and punished at that place, whether the unlawfulness of the communication through the post-office consists in its being a threatening letter. (The King v. Girdwood, 1 Leach, 142; S. C., 2 East P. C., 1120; Esser's Case, 2 East P. C., 1125); or a libel (The King v. Johnson, 7 East, 65; S. C., 3 J. P. Smith, 94; The King v. Burdett, 4 B. & Ald, 95, 136, 150, 170, 184; Commonwealth v. Blanding, 3 Pick.,

304; In re Buell, 3 Dillon, 116, 122); or a false pretense or fraudulent representation (Regina v. Leech, Dearsley, 642; S. S., 7 Cox Crim. Cas., 100; The Queen v. Rogers, 3 Q. B. D., 28; S. C., 14 Cox Crim. Cas., 22; People v. Rathbun, 21 Wend., 509; People v. Adams, 3 Denio, 190, and 1 N. Y., 173; Foute v. State, 15 Lea [Tenn.], 712)." (In re Palliser, 136 U. S., 265.)

And when the offense is against the state laws the criminal should be surrendered.

The courts of the United States have steadily refused to inquire into the means by which a person is brought within the jurisdiction for trial and punishment. Where an arrest has been made illegally (In re Johnson, 167 U. S., 120), or where a person has been kidnapped within a foreign jurisdiction and brought within a state for trial (Kerr v. Ill., 119 U. S., 436); or where a person has been surrendered upon one charge and brought within a state and tried for another charge (Lascelles v. Georgia, 148 U. S., 542), the courts has consistently held that none of these acts constitute a defense, and that once within the jurisdiction the person may be tried and punished for any offense. And there is only one exception known to the law aside from the exception made by the court below, and that is where fugitives have been surrendered pursuant to the provision of extradition treaties with foreign powers, and there the courts have held that a person surrendered upon one charge can be tried on that charge only, and the basis of those decisions is that the surrender is based upon the treaty as a matter of comity, and foreign powers are bound to observe the condition of the treaties.

Thus, it appears that no matter how a person may be brought within the jurisdiction of the court he may be tried and punished, and that so far as offenses against the United States are concerned, a person may be sent the length or breadth of the United Sta for trial and punishment, and that it is immaterial whether or not he was within the state or district wherein the crime was committed at the time of its commission. What reason, then, is there for ingrafting upon the law of interstate rendition the exception found in the decision of the court below? As was held in the Palliser case, a man may be sent from New York to Illinois and be tried for the crime of causing to be delivered by mail a lottery

certificate, in spite of the fact that the certificate was delivered and the crime committed in the southern district of Illinois at a time when the prisoner was in the state of New York. As was held in the case of Horner v. United States (143 U. S., 207), a man may be sent from New York to Connecticut to be tried for the crime of offering money to a postmaster with the intent to influence him to commit a fraud against the United States when the offender was within the state of New York at the time the offense was committed in Connecticut. Then, why not may a man be sent from the state of New York to the state of Tennessee where he has committed the crime of larceny, although not actually in the demanding state at the time the offense was committed?

All throughout this country there are many cities, large and small, and villages on opposite sides of state boundaries, some separated by a river and others only by an imaginary boundary line. For example, we find New York city in the state of New York separated by the Hudson river from Hoboken, and Jersey City in the state of New Jersey. We find St. Louis, Missouri, on one side of the Mississippi river, and we have East St. Louis, Illinois, on the opposite side. Instances might be multiplied where there is no water divison and nothing but the established boundary line. A person may shoot and maim or kill another across the line, or hurl a lighted missile across the boundary and commit arson, send an innocent messenger and commit larceny by pretenses, or commit larceny by the use of the telephone or telegraph or mail, and be absolutely exempt from the trial and punishment in the state wherein the crime was committed, when, if the same person, by the same means, offended against the laws of the United States, he could be surrendered and sent into the other state or district for trial and punishment. Can it be possible that an invisible line of demarcation shall be regarded as an unsurmountable barrier against the just demands of the neighboring state, so far as crimes against the laws of the state are concerned, when, as to offenses against the United States, the width of the continent is no protection?

Tennessee is state having jurisdiction of the crime.

The crime charged in the indictments herein was the crime of grand larceny and false pretenses. The defendant-in-error could have "committed the crime within the state" of Tennessee, although never physically present within the state. (Adams v. People, 1 N. Y., 173; State v. Grady, 34 Conn., 118; Comm. v. White, 123 Mass., 430; Comm. v. Smith, 93 Mass., 243; Lindsey v. Smith, 38 Ohio St., 507; United States v. Davis, 2 Sumner, 482; Reg. v. Barrett, 22 Eng. Law and Eq., 611; Reg. v. Brisac, 4 East, 164; State v. Chapin, 17 Ark., 565; State v. Morrow, 40 S. C., 211; Noyes v. State, 41 N. J. L., 418; Simpson v. State, 92 Ga., 41; Hatfield v. Comm., 12 S. W., 309.)

"When the commission of an offense commenced without this state is consummated within its boundaries, the person committing the offense is liable to punishment therefor in this state, although he was out of the state at the commission of the offense charged; if he consummated it in this state through the intervention of an innocent or guilty agent, or by any other means proceeding directly from himself, and in such a case the jurisdiction is in the county in which the offense was consummated, unless otherwise provided by law." (Sec. 5801, M. & V. Code [Tenn.])

And again, in the case of Palliser (136 U. S., at page 257) the court, in referring to the sixth amendment of the constitution which provides: "In all criminal prosecutions the accused shall enjoy the right of a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed," said: "But the right thereby secured is not a right to be tried in the district where the accused resides, or even in the district in which he is personally at the time of committing the crime, but the district 'wherein the crime shall have been committed'" distinctly recognized the fact that crime might be committed within states and judicial districts by persons not physically present within the state or district at the time of its commission, and that such persons could be tried in the state having jurisdiction.

Plaintiff in error returned only paper he had.

There seems to be some criticism in the opinion of the court below of the plaintiff-in-error for the failure to return all the papers that were used before the governor, but the plaintiff-in-error should not be criticised for this, nor should any unfavorable presumption be indulged in as against him, for the reason that it is the invariable rule of the executive of the state of New York to refuse to return any paper in an extradition case other than the warrant, and this rule is based upon the opinion prevailing in the executive department that the courts of the state have no jurisdiction to review the governor's action. However this may be, if the defendant-in-error desired to use any of those papers, they were just as accessible to him as they were to the plaintiff-in-error, and, if there was anything in them favorable to him, he might have attached copies of the papers, either to the petition or to his traverse. Plaintiff-in-error returned the only paper that ever came into his possession, namely, the warrant.

However, in addition to such papers as were filed before the governor on the hearing, considerable time was spent in giving oral testimony and in discussion of the case, and Corkran made several statements with reference to the matter, none of which were taken down, but all of which was material and have great influence with the governor in coming to his decision.

There seems to be an intimation that this case was solely based upon a charge of false pretenses, and, as that was a crime, a charge of which might be easily fabricated for the purpose of compelling the payment of a debt, that the court should be slow to assist in bringing the offender to punishment. That is not a fair argument, nor is it an argument against the right of rendition. False charges of any crime could be made against any one, and there is no more reason for withholding the power of the court in the case of false pretenses than there would be where the charge was murder or forgery. If the charge is false, it is easily met; if the charge is true, it ought to be tried out and punishment awarded. To say, however, that the court should be slow to act where the charge of false pretenses is made, because possibly the charge is not true, is unwarranted; it is as unsound an argument as an argument to repeal the penal code, because false charges of crime have been made in the past.

Larceny is a crime and the merits cannot be tried in *habeas corpus*.

It is said that it is hard to send a man from his home and friends to a distant jurisdiction for trial, but there is no real hardship in this. When a man commits a crime within another jurisdiction he thereby selects the jurisdiction wherein the trial shall be had, and there is no burden imposed when the courts compel him to abide by his own selection. It would be a greater hardship to require prosecuting authorities to go to the distant place of his home and appear, first, before a committing magistrate, second, before a grand jury, and lastly, in a trial court, and to bring on these three occasions all the witnesses and documents.

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